

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION NO. 7174 OF 2002
WITH
SPECIAL CIVIL APPLICATION NO. 7175 OF 2002
WITH
SPECIAL CIVIL APPLICATION NO. 7176 OF 2002

For Approval and Signature:

Hon'ble MR.JUSTICE JAYANT PATEL

- =====
1. Whether Reporters of Local Papers may be allowed : YES
to see the judgements?
 2. To be referred to the Reporter or not? : YES
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the concerned : NO
Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals?
-

VERAVAL SEVA SAHAKARI MANDALI LTD

Versus

BHIMJIBHAI HARJIBHAI

Appearance:

MR PS CHAMPANERI for Petitioner No. 1
MR BM MANGUKIYA for Respondent No. 1
MR HARSHA DEVANI AGP for Respondent No. 2-4

CORAM : MR.JUSTICE JAYANT PATEL

Date of decision: 12/08/2002

COMMON ORAL JUDGEMENT

1. Draft amendment is allowed. Rule. Mr. Mangukia learned advocate appears and service of notice of Rule on behalf of the respondent no.1 and Ms. Harsha Devani, learned A.G.P. appears and waives service of notice of rule on behalf of the respondents no.2 to 4, in all three matters.

2. In all these three petitions common questions are involved and therefore they are being dealt with together.

3. The present petitions are preferred against the order dated 6-12-2001 passed by the Additional Registrar (Appeals), whereby registration granted to the petitioner society is cancelled. The petitioner has challenged the order passed by the State Government dated 30-4-2002 in exercise of revisional jurisdiction whereby the order dated 6-12-2001 passed by the Additional Registrar (Appeals) is confirmed.

4. The short facts of the case are that Santhali Juth Seva Sahakari Mandali Ltd. was registered under the provisions of the Gujarat Cooperative Societies Act (hereinafter referred to as the Act). The said petitioner society had about 2200 members out and had six working areas. It is the contention of the learned counsel for the petitioner that on 24-8-1998 vide resolution No. 21 at the Annual General Meeting it was resolved that the society may be divided in accordance with the Rules and 3 to 4 societies may be formed which may be convenience for the administration of the members working areas. It was also resolved that if new societies are registered, provisions of the rights and liabilities of the existing members may also be made. It is the case of the petitioner society that after the aforesaid resolution, the petitioner society applied for registration and the proposal of the petitioner society was considered by the Committee of the District Panchayat and ultimately upon recommendation of the said Committee registration came to be granted as per the order dated 13-9-2001.

5. Thereafter, on 24-9-2001, as per the petitioner society the resolution was passed for accepting the byelaws with a view to proceed with functioning of the petitioner society.

6. The respondent no. 3 herein preferred Appeal No. 1054 of 2001 before the Additional Registrar (Appeals)

against the order dated 12-9-2001 granting registration and the said appeal was filed u/s 153 of the Act. The Additional Registrar (Appeals) ultimately heard the matter and found that Santhali Juth Seva Sahakari Mandali Ltd. has given finance amounting to Rs.13,45,146/- for the members of the working area of for Dodiya Seva Sahakari Mandali Ltd., Rs.46,66,768/- for the members of the working area of Pratappura Seva Sahakari Mandali Ltd. and Rs.19,81,200/- for the members of working area of Veraval Seva Sahakari Mandali Ltd. It was further found by him that while granting registration the Assistant District Registrar, Coop. Societies, Panchayat has not properly taken care of the aforesaid aspect. The said aspect has also not been taken into consideration by the District Panchayat Production and Cooperative Committee. It was also found by the Additional Registrar (Appeals) that the registration has been granted without taking into consideration the guidelines issued by NABAD. It was further found that the District Central Cooperative Bank has issued N.O.C (No Objection Certificate) without taking into consideration the financial standard for the purpose of issuing N.O.C. It was also found by the Additional Registrar (Appeals) that the submissions made for the purpose of functioning of the petitioner society is not genuine and therefore ultimately the appeal was allowed and the order of granting registration was cancelled.

7. The matter was carried before the State Government by preferring Revision Application by the petitioner society concerned u/s 155 of the Act. The State Government found that the order passed by the Additional Registrar (Appeals) shows that there was breach of the provisions of Section 4 of the Act and the purpose was the election of Jasdan Agricultural Produce Market Committee, and hence dismissed the said Revision Application. Under these circumstances, the present petitions are filed.

8. Mr. Champaneri, learned advocate appearing for the petitioner has raised contention that the order passed by the Addl. Registrar ((Appeals) is contradictory inasmuch as he submitted that in case of Kisan Seva Sahakari Mandali Ltd. for which registration was refused, the Additional Registrar (Appeals) in Appeal No. 116/01 applying different yardstick allowed the appeal by giving directions to the said society. So far as the said contention of Mr. Champaneri is concerned, on perusal of the order passed by the Additional Registrar (Appeals) the copy whereof is made available to the Court for the purpose of reading, shows that the

before rejecting the application for registration, an opportunity of hearing was not given and therefore the order is set aside on the ground of breach of principle of natural justice.

9. Mr. Champaneri submits that against the said order of the Addl. Registration (Appeals), Revision Application has been preferred before the State Government and the State Government has rejected the Revision Application on the ground that it has no locus standie. Be as it may, but the fact remains that since the appeal came to be allowed on the ground of breach of the principles of natural justice, it cannot be concluded that the different yardstick has been applied by the Addl. Registrar (Appeals) while considering Appeal No. 116 of 2001 and Appeal No. 140 of 2001.

10. The said aspect is coupled with the fact that in the order of the Appellate Authority cogent reasons have been recorded justifying the grounds for allowing the appeal. It has also been record that the grant of registration was going to adversely affect to advance of about Rs.90 lacs given by Santhali Juth Seva Sahakari Mandali Ltd. to the members of it who would be in the working area of the petitioner society concerned and the said aspect has not been considered. The Addl. Registrar (Appeals) has also recorded that the guidelines issued by the NABAD are not taken into consideration and the District Central Cooperative Bank Ltd. while issuing N.O.C. has also not taken into consideration the financial standard for the purpose of issuing N.O.C. and therefore the Addl. Registrar (Appeals) after taking into consideration the entire material on record has give finding of fact, which cannot be interfered with in exercise of power under Article 226 of the Constitution of India, save and except the question of law which will be dealt with separately in subsequent paragraphs of this judgment.

11. Mr. Champaneri learned advocate for the petitioner has contended that once the Committee comprising of expert body has made recommendations for registration and such recommendations were accepted by the District Registrar for registration, the Appellate Authority could not have reversed the order. The power of the District Registrar of granting registration is subject to the right of the parties to prefer an appeal or in any case it is subject to the powers of the Appellate Authority. When the Appellate Authority has upon material referred in the order, has arrived at different conclusion, it cannot be said that the order

would be vulnerable on the ground that the first authority had recommended for granting of the registration and therefore I am of the view that second contention of Mr. Champaneri also fails.

12. Mr. Champaneri learned advocate for the petitioner has submitted that once the registration has been granted, it cannot be cancelled under wrong procedure and the procedure as required under Sections 20 or Sec. 107 of the Act are required to be followed or in any case he has submitted that the procedure for cancellation of the registration as provided u/s 20 or 107 of the Act must be satisfied if the registration is to be cancelled after the society starts functioning. I am afraid such contention can be accepted because once registration is granted and granting of registration was the subject matter of appeal. While considering the matter in appeal against the question of granting of registration, the provisions of Section 20 and 107 of the Act will have no applicability and therefore the said contention of Mr. Champaneri cannot also be accepted.

13. Mr. Champaneri has tried to show that the guidelines issued by the NABAD are not breached but rather the recommendations of the of the Expert Committee were in accordance with the guidelines issued by the NABAD. The scope of judicial review under Articles 226 and 227 of the Constitution of India is restricted to the error of jurisdiction or is rather restricted to any error apparent on the face of the record. When the Appellate Authority who is the Additional Registrar (Appeals) has considered the material and its decision is confirmed in Revision, this Court cannot reappreciate the finding of fact in exercise of power under Article 226 or 227 of the Constitution of India and therefore the said contention of Mr. Champaneri learned advocate for the petitioner cannot be accepted.

14. Mr. Champaneri, learned advocate for the petitioner submitted that after the petitioner society come into existence, the petitioner society has advanced loan of about Rs.30,45,146/- amount through its members. During the course of hearing, the query was put by the Court to Mr. Champaneri as to whether for devision of the existing members or liability of Santhali Juth Seva Sahakari Mandali Ltd. any procedure u/s 17 of the Act was followed or not. Mr. Champaneri in reply thereto after verifying the record submitted that no such procedure u/s 17 of the Act has been followed for devision of Santhali Juth Seva Sahakari Mandali Ltd. However, he submitted that sofar as the petitioner

society is concerned, the independent application for grant of registration was submitted. He therefore submitted that the procedure u/s 17 of the Act is not required to be followed and in his submission, section no. 17 would not be applicable. Perusal of the resolution at Annexure-A dated 24-8-1999 goes to show that the general body of the society indicated for division into 3 to 4 societies and also for division of properties and liabilities and therefore prima facie I am of the view that when any society is to be divided into one or more societies, section 17 of the Act would be applicable more particularly for the purpose of apportionment of the liability and distribution of the assets of the society concerned. It appears that such procedure is also not followed.

15. However, on account of cancellation of registration, the consequence will have to be considered. Mr. Champaneri lastly submitted that after the cooperative societies were granted registration, loans have been advanced, amounting to Rs.94,14,000/- by Shri Dodiya Seva Sahakari Mandali Ltd., Rs.34,5000/- by Shri Veraval Seva Sahakari Mandali Ltd. and, Rs. 64,16,000/by Shri Pratapur (Santhali) Seva Sahakari Mandali Ltd. Mr. Champaneri also submitted that the said amounts of loan have been given by the Rajkot District Cooperative Bank, Rajkot and the society in turn has granted the said loan amount to the farmers who are the members of the concerned petitioner society. Mr. Champaneri further submitted that on account of cancellation of the registration, complication for recovery of the aforesaid loan amounts would also arise. He submitted that such contention has not been properly taken into consideration by the Appellate Authority or by the State Government. On account of last contention raised by Mr. Champaneri with a view to see that the situation may not arise that the cooperative society or Bank may not be able to recover the loan amounts. I have called upon the learned Assistant Government Pleader to appear in the matter. After hearing learned A.G.P. and keeping in view the last contention raised by Mr. Champaneri, I find it just and proper that the impugned orders passed by the Appellate Authority and the State Government are modified to the extent that the rights of the petitioner society and the District Cooperative Bank Ltd., Rajkot for the purpose of recovery of the loan amounts shall not be prejudiced in any manner whatsoever on account of the order dated 30-4-2002 passed by the State Government and the order 6-12-2001 passed by the Appellate Authority.

16. In view of the above discussion, the petitions are partly allowed by clarifying that the impugned order dated 6-12-2001 passed by the Appellate Authority and the impugned order dated 30-4-2002 passed by the State Government in revision for cancellation of the Registration shall not in any manner prejudice or adversely affect the rights of the petitioner society or Rajkot District Cooperative Bank, Rajkot, as the case may, for the purpose of recovery of loan granted to the members of the petitioner society during the period when the concerned petitioner society was functioning and its registration was in operation. Accordingly, each petition Rule is made absolute to the aforesaid extent, with no order as to costs.

(Jayant Patel, J.)

-0-0-0-0-0-

/JVSatwara/